

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:10-CR-76-FL

UNITED STATES OF AMERICA

v.

NEWTON A. SHEARER,

Defendant.

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ORDER

This matter comes before the court on defendant's motion to suppress (DE ## 24, 40). The government timely filed a response in opposition. The matter was referred to United States Magistrate Judge Robert Jones pursuant to 28 U.S.C. § 636(b)(1)(C) for entry of a memorandum and recommendation ("M&R"). The magistrate judge conducted an evidentiary hearing on December 20, 2010. The magistrate judge filed his M&R on January 24, 2011, wherein he recommends that defendant's motion to suppress be denied. No objections to the M&R were filed within the time permitted. The issues raised are therefore ripe for review. For the reasons that follow, the court adopts the recommendation of the magistrate judge and denies defendant's motion to suppress.

A detailed statement of the facts of this case is set forth in the M&R. The facts are summarized here only briefly for reference. On March 17, 2010, defendant was named in a six count indictment charging defendant with various immigration, document fraud, narcotics, and firearms offenses. The charges arose out of a search of defendant's residence and vehicle that was conducted pursuant to a warrant on June 29, 2009. The search warrant authorized that items to be seized included documents, digital media, cellular telephones, and communication records pertaining to the

identity of the defendant. The warrant sought evidence of various fraud, identity theft, forgery and counterfeiting crimes. During the search of defendant's residence and vehicle, officers seized various items of evidence relating to defendant's identity and criminal conduct involving forgery and fraud as described in the search warrant. Officers also seized firearms, ammunition, and narcotics.


Defendant seeks to suppress all evidence seized during the search of his residence and vehicle. Defendant argues that there was not sufficient probable cause to support the issuance of the search warrant; specifically, defendant argues that the information contained in the application was vague and stale, and that the two confidential informants who provided information were not reliable. Alternatively, defendant argues that the officers exceeded the scope of the warrant by seizing narcotics, firearms and ammunition. Defendant also argues that the warrant to search for evidence of identity crimes was merely a pretext to conduct a search for illegal drug activity.

The matter is before the court with benefit of the magistrate judge's thoughtful analysis. Upon careful review of the record, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). In the absence of a specific and timely filed objection, the court reviews the magistrate judge's findings and conclusions only for clear error, and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983).

The magistrate judge thoroughly examined each of defendant's arguments and determined that defendant's motion to suppress should be denied. Having carefully reviewed the filings in this case, the M&R, and the relevant case law, the court agrees with the conclusions reached by the magistrate judge, to which no objections have been filed. Finding no clear error, the court ADOPTS

the findings and recommendations of the magistrate judge in full, accordingly, defendant's motion to suppress (DE ##24, 40) is DENIED.

SO ORDERED, this 25th day of February, 2011.


LOUISE W. FLANAGAN
Chief United States District Judge